

**COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT**

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**The Minutes**

**November 24, 2003**

At 9:31 a.m., the court met in the Library and Courts Building to begin its court calendar session. Present were Blease, Associate Justice; Raye, Associate Justice; Hull, Associate Justice and Guzman, bailiff.

**C043029      STANISLAUS COUNTY SHERIFF'S DEPARTMENT v. MACK and  
INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL NO. 3**

Cause called. Martin J. Mayer argued for appellant. Antonio Ruiz argued for respondent. Cause submitted.

At 9:55 a.m., the court recessed. At 9:59 a.m., the court reconvened with Blease, Associate Justice; Sims, Associate Justice; and Hull, Associate Justice.

**C040892      THE PEOPLE v. VANEK**

Cause called. Hilda Scheib, court appointed counsel, argued for appellant. Judy Kaida, Deputy Attorney General, argued for respondent. Cause submitted.

At 10:15 a.m., the court recessed. At 10:19 a.m., the court reconvened with Sims, Associate Justice; Morrison, Associate Justice; and Hull, Associate Justice.

**C043762      SPATES v. DAMERON HOSPITAL ASSOCIATION**

Cause called. Brenda C. Morrissey argued for appellant. Orlie L. Curtis argued for respondent. Cause submitted.

At 10:46 a.m., the court recessed. At 10:51 a.m., the court reconvened with Morrison, Associate Justice; Hull, Associate Justice; and Robie, Associate Justice.

**C040219      THE PEOPLE v. BARMETTLER**

Cause called. Eleanor Kraft, court appointed counsel, argued for appellant. Jesse Witt, Deputy Attorney General, argued for respondent. Cause submitted.

At 11:11 a.m., the court recessed. At 11:16 a.m., the court reconvened with Nicholson, Associate Justice; Raye, Associate Justice; and Robie, Associate Justice.

**C043583      THE NATIONAL TAX LIMITATION COMMITTEE et al. v. DAVIS, as Governor,  
etc.**

Cause called. Richard D. Ackerman argued for appellant. Jonathan K. Renner argued for respondent. Cause submitted.

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**November 24, 2003, continued**

At 12:14 p.m., the court recessed. At 2:04 p.m., the court reconvened.

**C042664      YOUNG v. YOUNG**

Cause called. Lei Ann VarlettaYoung argued In Pro Per as appellant. Respondent did not appear. Cause submitted.

At 2:17 p.m., the court recessed. At 2:21 p.m., the court reconvened with Scotland, Presiding Justice; Sims, Associate Justice; and Robie, Associate Justice.

**C042523      BLACK DIAMOND ASPHALT v. ADAMES**

Cause called. Barry D. Brown argued for appellant. Roger S. Matzkind argued for respondent. Cause submitted.

At 2:52 p.m., the court recessed until 9:30 a.m., Monday, December 15, 2003.

**C040990      THE PEOPLE v. GARCIA**

**(Not for Publication)**

The appeal is dismissed.

RAYE, J.

We concur:    Blease, Acting P.J.  
                 Morrison, J.

**C041663      THE PEOPLE v. RIVERA**

**(Not for Publication)**

The judgment is affirmed.

ROBIE, J.

We concur:    Scotland, P.J.  
                 Hull, J.

**C043119      THE PEOPLE v. ESPARZA**

**(Not for Publication)**

The judgment is affirmed.

SIMS, Acting P.J.

We concur:    Davis, J.  
                 Raye, J.

**C043968      THE PEOPLE v. MULKEY**

**(Not for Publication)**

The judgment is affirmed.

RAYE, J.

We concur:    Blease, Acting P.J.  
                 Robie, J.

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**November 24, 2003, continued**

- C043479**      **In re B.D.; DEPARTMENT OF HEALTH AND HUMAN SERVICES v. KIMBERLY G.**      **(Not for Publication)**  
                 The orders of the juvenile court are affirmed.  
                 SIMS, J.  
We concur:      Scotland, P.J.  
                 Robie, J.
- C037736**      **GARCIA v. STATE DEPARTMENT OF EDUCATION**  
**C038300**      **GARCIA v. STATE DEPARTMENT OF EDUCATION**  
BY THE COURT:  
                 The petition for rehearing of appellant State Department of Education is denied.  
                 Blease, Acting P.J.
- C041022**      **THE PEOPLE v. KEPPELER**  
BY THE COURT:  
                 Appellant's petition for rehearing is denied.  
                 MORRISON, Acting P.J.
- C041511**      **MAULDIN et al. v. COUPE et al.**  
BY THE COURT:  
                 Appellant's request to publish the opinion filed on October 27, 2003, is denied.  
                 DAVIS, Acting P.J.

**November 25, 2003**

- C037213**      **THE PEOPLE v. BOWCUTT**      **(Not for Publication)**  
                 The judgment is modified...The trial court is directed to amend the abstract of judgment to reflect this modification, and to forward the amended abstract to the Department of Corrections. In all other respects, the judgment is affirmed.  
                 HULL, J.  
We concur:      Scotland, P.J.  
                 Morrison, J.
- C037421**      **THE PEOPLE v. MACK**      **(Not for Publication)**  
                 The judgment is affirmed.  
                 BLEASE, Acting P.J.  
We concur:      Davis, J.  
                 Hull, J.

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**November 25, 2003, continued**

- C041118      THE PEOPLE v. TEJEDA      (Not for Publication)**  
The judgment is affirmed.  
DAVIS, J.  
We concur: Scotland, P.J.  
Robie, J.
- C041507      THE PEOPLE v. GRANT      (Not for Publication)**  
The judgment is affirmed.  
NICHOLSON, Acting P.J.  
We concur: Morrison, J.  
Robie, J.
- C042100      THE PEOPLE v. CALITRI      (Not for Publication)**  
The judgment is reversed.  
DAVIS, Acting P.J.  
We concur: Morrison, J.  
Robie, J.
- C042369      THE PEOPLE v. ZIMMERMAN      (Not for Publication)**  
The judgment is affirmed.  
HULL, J.  
We concur: Davis, Acting P.J.  
Robie, J.
- C042458      THE PEOPLE v. BRUNETTE      (Not for Publication)**  
The judgment is affirmed.  
NICHOLSON, J.  
We concur: Scotland, P.J.  
Sims, J.
- C042744      THE PEOPLE v. ALLEGHENY CASUALTY COMPANY      (Not for Publication)**  
The trial court is ordered to correct the judgment, removing Bail House  
Bail Bonds as a judgment debtor. As modified, the judgment is affirmed.  
NICHOLSON, J.  
We concur: Blease, Acting P.J.  
Hull, J.
- C043105      THE PEOPLE v. NAVARRO      (Not for Publication)**  
The judgment is modified... As modified, the judgment is affirmed.  
BLEASE, Acting P.J.  
We concur: Davis, J.  
Raye, J.

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**November 25, 2003, continued**

- C043251 THE PEOPLE v. HUMASON (Not for Publication)**  
The order denying defendant's motion to withdraw his plea is affirmed.  
SCOTLAND, P.J.  
We concur: Nicholson, J.  
Robie, J.
- C044171 THE PEOPLE v. JOSEPH (Not for Publication)**  
The judgment is affirmed.  
ROBIE, J.  
We concur: Blease, Acting P.J.  
Raye, J.
- C043180 FARNSWORTH v. CITY OF SACRAMENTO CIVIL SERVICE BOARD and CITY OF SACRAMENTO (Not for Publication)**  
The judgment is affirmed.  
SCOTLAND, P.J.  
We concur: Morrison, J.  
Robie, J.
- C042351 PHILLIP C. v. KIMBERLY F. (Not for Publication)**  
**C042351 TOM L. v. KIMBERLY F. (Not for Publication)**  
The judgment (order) is affirmed.  
BLEASE, Acting P.J.  
We concur: Nicholson, J.  
Morrison, J.
- C044566 MICHAEL G. v. THE SUPERIOR COURT OF SACRAMENTO COUNTY and SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES (Not for Publication)**  
Let a peremptory writ of mandate issue, directing respondent juvenile court to vacate its orders terminating petitioner's reunification services and scheduling a section 366.26 hearing. The matter is remanded to respondent juvenile court to exercise its discretion whether to continue the 18-month review hearing and order additional services for petitioner. The stay issued by this court is vacated upon the finality of this opinion.  
SCOTLAND, P.J.  
We concur: Sims, J.  
Butz, J.

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**November 25, 2003, continued**

**C041511      MAULDIN et al. v. COUPE et al.**

BY THE COURT:

Respondents' petition for rehearing is granted. The decision filed on October 27, 2003, is vacated.

The parties shall file simultaneous letter briefs not later than 30 days after the date of this order limited to a single issue: Was it plaintiff's burden on summary judgment to present evidence that defendant breached its duty to use due care not to increase the risk to spectators inherent in the motocross event or was it defendant's burden to show that it did not?

DAVIS, Acting P.J.

**C043785      In re DASIN T. et al.; EL DORADO COUNTY DEPARTMENT OF SOCIAL SERVICES v. DARCI S.**

BY THE COURT:

Appellant's petition for rehearing is denied.

SCOTLAND, P.J.

**November 26, 2003**

**C043773      THE PEOPLE v. ADAMS      (Not for Publication)**

The judgment is affirmed.

RAYE, J.

We concur:    Blease, Acting P.J.

Davis, J.

**C043819      THE PEOPLE v. LEVINE      (Not for Publication)**

The judgment is affirmed.

RAYE, J.

We concur:    Blease, Acting P.J.

Robie, J.

**C043881      THE PEOPLE v. WARREN      (Not for Publication)**

The trial court is directed to prepare a corrected abstract of judgment to reflect that conduct credits were awarded pursuant to Penal Code section 4019 and to forward a certified copy to the Department of Corrections. The judgment is affirmed.

BLEASE, Acting P.J.

We concur:    Raye, J.

Robie, J.

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**November 26, 2003, continued**

**C044245      THE PEOPLE v. BOATWRIGHT      (Not for Publication)**

The judgment is affirmed.

BUTZ, J.

We concur:    Scotland, P.J.

Sims, J.

**C044439      THE PEOPLE v. MARTIN      (Not for Publication)**

The judgment is affirmed.

RAYE, J.

We concur:    Blease, Acting P.J.

Robie, J.

**C040553      PATERNO et al. v. STATE OF CALIFORNIA et al.      (Certified for Publication)**

The judgment in favor of the District is affirmed. Paterno shall pay the District's costs on appeal. (Cal. Rules of Court, rule 27(a).) The District also will be entitled to its costs of suit from Paterno. (*Locklin, supra*, 7 Cal.4th at pp. 375-377.)

The judgment in favor of the State is reversed and the cause is remanded with directions to enter judgment for Paterno and conduct such further proceedings as are necessary to determine the damages of nonsample plaintiffs. The state shall pay Paterno's costs on appeal. (Cal. Rules of Court, rule 27(a).) Paterno also will be entitled to his costs of suit from the State, including "reasonable attorney, appraisal, and engineering fees" actually incurred. (Code Civ. Proc., § 1036.)

The trial court is directed to give this case priority over all civil cases except as statutes otherwise require, and to take all feasible steps to expedite this case.

MORRISON, J.

We concur:    Sims, Acting P.J.

Nicholson, J.

**C040818      HEALY v. BAUER      (Not for Publication)**

The judgment is affirmed. Defendant shall recover his costs on appeal.

SIMS, J.

We concur:    Blease, Acting P.J.

Nicholson, J.

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**November 26, 2003, continued**

- C041519      GUNZ v. GUNZ      (Not for Publication)**  
The judgment (order) is affirmed. Mother shall receive her costs on appeal. (Cal. Rules of Court, Rule 27(a).)  
SIMS, J.  
We concur: Scotland, P.J.  
Blease, J.
- C042295      SALAAM et al. v. PUBLIC STORAGE, INC.      (Not for Publication)**  
Plaintiffs' motion to augment, dated September 4, 2003, is denied. The order denying class certification is affirmed.  
Nicholson, Acting P.J.  
We concur: Raye, J.  
Robie, J.
- C042501      JOHNSON v. STATE OF CALIFORNIA et al.      (Not for Publication)**  
The judgment is affirmed.  
HULL, J.  
We concur: Blease, Acting P.J.  
Sims, J.
- C042770      WAGNER v. BOARD OF RETIREMENT, etc.      (Not for Publication)**  
The judgment is affirmed.  
MORRISON, J.  
We concur: Nicholson, Acting P.J.  
Robie, J.
- C042902      KARADANIS et al. v. HOSEIT      (Not for Publication)**  
The judgment is affirmed.  
BLEASE, Acting P.J.  
We concur: Davis, J.  
Hull, J.
- C042958      COUNTY OF PLACER v. MILLER      (Not for Publication)**  
The judgment is affirmed.  
BLEASE, Acting P.J.  
We concur: Nicholson, J.  
Morrison, J.



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**November 26, 2003, continued**

**C043130      In re C.F. et al.; SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND  
HUMAN SERVICES v. EDWINA B.                      (Not for Publication)**

The December 26, 2002, orders of the juvenile court are reversed, and the matter is remanded to the juvenile court with directions to order DHHS to provide each of the three Cherokee tribes with proper notice of the proceedings under the ICWA. If, after receiving notice under the ICWA, no tribe indicated the minor is an Indian child within the meaning of the ICWA, then the juvenile court shall reinstate the December 26, 2002, orders. If, on the other hand, a tribe responds affirmatively, then the court must consider the issue pursuant to the procedural and evidentiary requirements of the ICWA.

RAYE, J.

We concur:      Blease, Acting P.J.

Robie, J.

**November 27, 2003**

**There are no minutes for this date.**

**November 28, 2003**

**There are no minutes for this date.**